

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	CASE NO. 14-31345
	§	
JAGGER INDUSTRIES, LLC	§	
	§	CHAPTER 7
Debtor.	§	

**TRUSTEE'S MOTION TO COMPROMISE CONTROVERSY WITH
ENVIRONMENTAL AUTHORITIES**

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Janet Northrup, chapter 7 trustee (the "Trustee") of the bankruptcy estate of Jagger Industries, LLC ("Jagger" or the "Debtor"), files this *Motion to Compromise Controversy with Environmental Authorities* (the "Motion"), seeking court authority to settle certain claims and litigation with the State of Texas and Harris County.

SUMMARY OF REQUESTED RELIEF

1. The Trustee seeks approval of claims and pending litigation more specifically described below. The proposed settlement provides for an Agreed Final Judgment in an

enforcement action pending in Harris County, Texas, with awards to the environmental authorities being allowed as subordinated claims in the Debtor's bankruptcy case.

JURISDICTION AND VENUE

2. This court has jurisdiction to consider the Motion pursuant to 28 U.S.C. § 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b).

3. Venue is proper before this court pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

4. Before the fall of 2013, Jagger operated an industrial facility at 9400 Needlepoint Road, Baytown, Texas (the "Facility"). The Facility processed brown grease by means of infiltration and heating to produce industrial fuel.

5. On or about November 14, 2013, Harris County and the State of Texas (the "Environmental Authorities") filed an enforcement action against Jagger, styled Cause No. 2013-68798; *Harris County, et al v. Jagger Industries, LLC*; in the 281st Judicial District Court of Harris County, Texas (the "Enforcement Action"). Harris County's Original Petition and Application for Temporary and Permanent Injunction in the Enforcement Action alleges that from December 18, 2012 to October 21, 2013, the Facility's operations caused or contributed to air pollution on five separate occasions in violation of 30 Tex. Admin. Code § 101.4.

6. On March 5, 2014, Jagger filed for Chapter 7 Bankruptcy in the United States Bankruptcy Court for the Southern District of Texas. Janet Northrup was appointed and serves as the chapter 7 trustee of Jagger's bankruptcy estate.

7. After the Trustee's appointment, counsel for the Trustee and counsel for the Environmental Authorities actively participated in negotiations for resolution of the Enforcement Action.

PROPOSED TERMS OF SETTLEMENT

8. Upon entry of an Order approving this Motion, and assuming no objection or adverse comments are received by the State of Texas to publication of the settlement in the *Texas Register*, as required by law, the Enforcement Action will be resolved on the following terms:

- (a) The parties will submit an Agreed Final Judgment for entry in the Enforcement Action, in the form attached as **Exhibit "1"**.
- (b) Each of the Environmental Authorities will have judgment against the Debtor in the amount of \$54,00.
- (c) All amounts awarded in the Agreed Final Judgment shall be treated solely as claims under 11 U.S.C. §726(a)(4), and subordinated as provided in that statute.

AUTHORITIES GOVERNING COMPROMISES

9. FED. R. BANKR. P. 9019 authorizes bankruptcy courts to approve compromises and settlements with the trustee. Ultimately, a compromise must be "fair, equitable, and in the best interest of the estate." *In re Jackson Brewing Co.*, 624 F.2d 599, 602 (5th Cir. 1980). When considering whether a compromise is "fair, equitable and in the best interest of the estate," the court must weigh the "terms of the compromise with the likely rewards of litigation." *Id.* Within the 5th Circuit, courts must consider (i) the probability of success in the litigation, with due consideration for the uncertainty in fact and law; (ii) difficulty of collection of any judgment;

(iii) the complexity and likely duration of the litigation and any attendant expense, inconvenience and delay; (iv) all other factors bearing on the wisdom of the compromise; (v) the extent to which the settlement is truly the product of arms-length bargaining and not of fraud or collusion; and (vi) deference to the concerns of creditors. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414 (1968); *In re Jackson Brewing Co.*, 624 F.2d at 602.

10. Although the Trustee bears the burden of establishing that the proposed compromise is in the best interest of the estates, compromises are a normal part of the bankruptcy process and oftentimes a desirable and wise method of bringing to a close proceedings that are otherwise lengthy, complicated and costly. As such, the Trustee's burden is not high. *In re Shankman*, No. 08-36327, 2010 WL 743297, at *3 (Bankr. S.D. Tex. Mar. 2, 2010). The decision to approve a compromise lies within the court's discretion, and the court "need not conduct a mini-trial to determine the probable outcome of any claims waived in the settlement." *Id.* (quoting *In re Cajun Elec. Power Co-Op, Inc.*, 119 F.3d 349, 355 (5th Cir. 1997)). "The Trustee need only show that...[her] decision falls within the 'range of reasonable litigation alternatives.'" *Id.* (*internal citations omitted*).

11. The proposed settlement is fair, equitable and in the best interest of the estate. Such proposed settlement is the product of arms-length bargaining and not of fraud or collusion.

12. **Probability of Success.** The Trustee has evaluated the Environmental Authorities' claims to the best of her ability, but records are lacking. Although the Environmental Authorities would have the burden of proof in the Enforcement Action, it appears to the Trustee it would be difficult to rebut their allegations. As such, the Trustee acknowledges that the Environmental Authorities have a substantial likelihood of succeeding on some or all of

their asserted claims. The Trustee has determined in her business judgment that the proposed settlement with the Environmental Authorities properly recognizes the risks of litigation and that the proposed settlement is within the range of potential outcomes. Consequently, the Trustee believes this factor supports settlement.

13. **Complexity and Duration of the Litigation.** The litigation involves moderately complex factual and legal issues, most likely requiring the employment of special counsel and the presentation of expert testimony at a cost to the bankruptcy estate. The Trustee believes in her business judgment that a non-consensual resolution of the Environmental Authorities' claims would be costly as it would require litigation. The proposed settlement avoids such costs and uncertainty. The Trustee has concluded this factor supports the proposed settlement.

14. **Difficulty of Collection.** This factor is not applicable as the Environmental Authorities are asserting claims against the Debtor's estate.

15. **Deference to Creditors.** For the reasons stated above, the Trustee in her business judgment has determined that the proposed settlement is fair, equitable and in the best interest of the estate and its creditors. This pleading will be served on creditors for any comment or objections they may have.

WHEREFORE, PREMISES CONSIDERED, Janet Northrup, chapter 7 trustee, prays that the court (i) grant this Motion; (ii) approve the settlement on the terms set out in this Motion; (iii) authorize the parties to take all actions and execute all documents necessary to effectuate the settlement; and (iv) grant such other relief as the court finds appropriate and just to grant.

HUGHES WATTERS ASKANASE, LLP

By: /s/ Rhonda R. Chandler
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ATTORNEYS FOR JANET NORTHRUP,
CHAPTER 7 TRUSTEE

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Trustee's *Motion to Compromise Controversy with Environmental Authorities* was served on all parties shown on the attached Service List, by first class mail and/or ECF on September 23, 2014.

/s/ Rhonda R. Chandler
Rhonda R. Chandler

Cause No. 2013-68798

HARRIS COUNTY, TEXAS,	§	IN THE DISTRICT COURT OF
	§	
and	§	
	§	
THE STATE OF TEXAS, acting on	§	
behalf of the Texas Commission on	§	
Environmental Quality, a Necessary	§	
and Indispensable Party,	§	HARRIS COUNTY, TEXAS
	§	
Plaintiffs,	§	
	§	
v.	§	
	§	
JAGGER INDUSTRIES, LLC,	§	
	§	
Defendant.	§	281st JUDICIAL DISTRICT

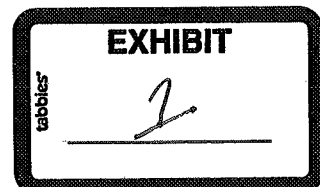
DRAFT

AGREED FINAL JUDGMENT

On this day, Plaintiffs, Harris County. Texas (Harris County) and the State of Texas (State), and Defendant, Jagger Industries, LLC (Jagger), hereinafter collectively referred to as the Parties, submitted this Agreed Final Judgment (Agreed Judgment). By presenting this Agreed Judgment to the Court, the State of Texas announces that it has published notice of this Agreed Judgment in the *Texas Register* for 30 days as required by Texas Water Code § 7.110 and received no comments that indicate the proposed settlement is inappropriate, improper, inadequate, or inconsistent with applicable law.

1. BACKGROUND

1.1. Jagger operated an industrial facility at 9400 Needlepoint Road, Baytown, Texas (Facility). The Facility processed brown grease by means of infiltration and heating to produce industrial fuel.



1.2. Harris County's Original Petition and Application for Temporary and Permanent Injunction alleges that from December 18, 2012 to October 21, 2013, the Facility's operations caused or contributed to air pollution on five separate occasions in violation of 30 Tex. Admin. Code § 101.4.

1.3. On March 5, 2014, Jagger filed for Chapter 7 Bankruptcy in the United States Bankruptcy Court for the Southern District of Texas. Janet Northrup was appointed and serves as the chapter 7 trustee (Trustee) of Jagger's bankruptcy estate.

2. STIPULATIONS

In agreeing to this Agreed Judgment the Parties hereby stipulate to the following:

2.1. Plaintiffs and Defendant understand and agree to the terms of this Agreed Judgment.

2.2. This Agreed Judgment complies with all statutory, jurisdictional, and procedural requisites necessary for entry and enforcement.

2.3. The Parties agree to the terms of the Agreed Judgment and waive the right to appeal its validity.

2.4. The Parties agree that they actively participated in the negotiations leading up to this Agreed Judgment, they understand the duties placed upon them by the Agreed Judgment, they have read the terms of the Agreed Judgment, and that the Agreed Judgment is not ambiguous.

2.5. Jagger denies the occurrence of any violation of the law. The entry of this Agreed Judgment is not an admission by Jagger of any violation alleged by Harris County and the State. The parties have agreed to this Agreed Judgment solely in the interest of

compromise and judicial efficiency, to avoid the uncertainties and costs of litigation, and to further the efficient administration of the Jagger bankruptcy estate.

3. CIVIL PENALTIES AND ATTORNEY'S FEES

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

3.1. Harris County shall have judgment from and against Jagger for civil penalties in the amount of Fifty Thousand Dollars and No Cents (\$50,000.00).

3.2. The State of Texas shall have judgment from and against Jagger for civil penalties in the amount of Fifty Thousand Dollars and No Cents (\$50,000.00).

3.3. Harris County shall have judgment from and against Jagger for attorney's fees in the amount of Four Thousand Dollars and No Cents (\$4,000.00).

3.4. The State of Texas shall have judgment from and against Jagger for attorney's fees in the amount of Four Thousand Dollars and No Cents (\$4,000.00).

3.5. Costs of court are taxes against the party occurring them.

4. PAYMENTS

4.1. All amounts required to be paid to Harris County in accordance with this Agreed Judgment shall be paid by check made payable to "Harris County, Texas for deposit into the General Fund." The check shall reflect that payment is made "re: cause no. 2013-68798." Checks shall be delivered to Harris County Attorney's Office, Environmental and Infrastructure Group, 2010 Congress Avenue, 15th Floor, Houston, Texas 77002, Attn: Sarah Jane Utley.

4.2. All amounts required to be paid to the State of Texas in accordance with this Agreed Judgment shall be paid by check made payable to the "State of Texas (AG

133467803).” Checks shall be delivered to Division Chief, Environmental Protection Division MC-066, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711.

5. GENERAL PROVISIONS

5.1. This Agreed Judgment may be executed in multiple parts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Judgment may be transmitted by facsimile transmission or email to the other Party, which shall constitute an original signature for all purposes.

5.2. To the extent allowed by applicable law, including the U.S. Bankruptcy Code, Defendant shall pay post-judgment interest on all amounts awarded in this Agreed Judgment at the legal rate of five (5) per cent per annum.

5.3. To the extent allowed by applicable law, including the U.S. Bankruptcy Code, the Plaintiffs shall be allowed such writs and processes as may be needed and as permitted by law for the enforcement and collection of this Agreed Judgment; provided, however, the automatic stay under 11 U.S.C. §362 is not modified or waived by this Agreed Judgment.

5.4. To the extent allowed by applicable law, including the U.S. Bankruptcy Code, the Plaintiffs may abstract and record the Agreed Judgment in the exercise of their discretion and as permitted by law; provided, however, the automatic stay under 11 U.S.C. §362 is not modified or waived by this Agreed Judgment.

5.5. This Agreed Judgment shall not be construed in any way to relieve Jagger or its agents or contractors from the obligation to comply with any federal, state, or local law.

5.6. This Agreed Judgment shall not limit Defendant's responsibilities or liabilities for future violations of the Texas Water Code, the Texas Health and Safety Code, Title 30 Texas Administrative Code and all other applicable laws.

5.7. Each of the undersigned representatives of a party to this Agreed Judgment certifies that he or she is fully authorized to enter into the terms and conditions of the Agreed Judgment and to legally execute and bind that party to the Agreed Judgment.

5.8. This Agreed Judgment is agreed to as part of a settlement between Harris County, the State, and Jagger. This Agreed Judgment may not be entered and shall not be effective until (a) this Agreed Judgment has been approved by executive management of the Office of the Attorney General of Texas and the TCEQ; (b) the Trustee's motion to compromise controversy under Federal Rule of Bankruptcy Procedure 9019 has been approved by final Order of the bankruptcy court in which the bankruptcy of Jagger is pending, which motion shall provide that all amounts in this Agreed Judgment shall be treated solely as claims under 11 U.S.C. §726(a)(4); and (c) any applicable publication and approval process required for this Agreed Judgment has been completed.

5.9. All relief not specifically granted herein is denied.

5.10. This Agreed Judgment disposes of all Parties and all claims filed in this suit.

SIGNED ON _____, 2014.

DRAFT

JUDGE PRESIDING

AGREED AS TO FORM AND SUBSTANCE AND ENTRY REQUESTED:

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Attorney General of Texas

VINCE RYAN
Harris County Attorney

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**ATTORNEYS FOR HARRIS COUNTY,
TEXAS**

**ATTORNEYS FOR THE STATE OF
TEXA**

DRAFT

Janet Northrup
CHAPTER 7 TRUSTEE of the Bankruptcy
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SERVICE LIST

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Chapter 7 Trustee

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U.S. Trustee

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Trinity Industries Leasing Corporation
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United Rentals
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